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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/301,868	04/29/99	BECKMAN M	BECKMA.M-1

IM22/0330

PATENT LAW & VENTURE GROUP
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EXAMINER	
MAI, H	
ART UNIT	**PAPER NUMBER**
1761	7

DATE MAILED: 03/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/301,868	Applicant(s) Beckman
	Examiner Hao Mai	Group Art Unit 1761

☒ Responsive to communication(s) filed on *Jan 5, 2001* .

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *10-17* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *10-17* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Specification

1. The amendment filed 1-5-01 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: preselected to be of a size, preselected thickness, selected, a catch, allowing the combination to occupy substantially the same space as a drink bottle alone.

Applicant is required to cancel the new matter in the reply to this Office action.

Claim Rejections - 35 U.S.C. § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 10-17 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not have support for the following terminologies: fabricated, selected, a catch, allowing the combination to occupy substantially the same space as a drink bottle alone, without releasing the snack food from the envelope, thereby allowing a user to remove the snack envelop.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 10-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "substantially" in claim 10 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Claim 10 is unclear as to what applicant trying to claim by "a cylindrical envelop outer wall joined to the inner wall".

Claim 17 recites the limitation "a snack food". There is insufficient antecedent basis for this limitation in the claim. Claim 10 has already claimed "a snack food".

Claim Rejections - 35 U.S.C. § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 10, 14-15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Selz(4,693,410). Selz teaches drink bottle providing a cylindrical bottle wall joined axially with a diminished diameter bottle neck, the bottle neck terminating at a removal bottle cap; and a snack package fabricated as an envelop having an inner wall and an outer wall having a sealable opening

mounted on the outer wall for removably receiving a snack food, the snack package envelope having a cylindrical envelope outer wall joined to the inner wall, terminating with an aperture at one end thereof, the aperture having a size and shape for accepting the bottle neck and removable cap and located so the under the condition of the aperture engaged with the bottle neck and cap, there is a positioning of the inner surface of the snack envelope inner wall intimately against the bottle wall for securement therewith(fig. 13), the aperture further providing a concentrically oriented cylindrical inner wall for engagement with the bottle cap, the snack envelop extending diametrically from the bottle wall no more than by the thickness of the outer envelop wall(figs. 17-18).

Regarding claims 14 and 15, see figs. 3-4).

Regarding claim 17, see fig 10).

Claim Rejections - 35 U.S.C. § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selz in view of Barnes et al(5,674,546). Selz teaches all of the claimed limitations except for an adhesive layer. Barnes et al teach an adhesive tape to join the upper and lower container(see col. 6, lines 40+, fig.3). It would have been obvious to one of ordinary skill in the art to use the adhesive

layer as taught by Barnes et al, since Barnes et al teach the conventional method using adhesive to joint to part together.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Selz in view of Rea et al (5,950,913). Selz teaches all of the claimed limitations except for a spiral score. Rea et al teach a spiral score container(see col. 3, lines 4+). It would have been obvious to one of ordinary skill in the art to construct the envelope of Selz et al spirally as taught by Rea et al, since Rea et al teach that spirally-wound container is well known in the industry.

11. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Selz in view of LaBarbera(4,170,316). Selz teaches all of the claimed limitations except for the protuberance is a plurality of boses. LaBarbera teaches caps having the protuberance is a plurality of boses(see figs. 2-3D). It would have been obvious to one of ordinary skill in the art to provide the protuberance having a plurality of boses as taught by LaBarbera, since LaBarbera teaches that this protuberance is an improve wedge-fastening mechanism(see col. 1, lines 45).

Response to Arguments

12. Applicant's arguments with respect to claims 10-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Hao Mai, whose telephone number is (703) 306-9171. The Examiner can normally be reached on Monday-Thursday from 8AM-4:30PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Milton Cano (703)308-3959.

The fax phone number for this group is (703) 305-3599 or 305-7718.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Hao Mai/ hm

Patent Examiner/ Art Unit 1761

MILTON CANO
PRIMARY EXAMINER
Grp 1761